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COLUMBIA, SOUTH CAROLINA

February 21, 2008

**VIA ELECTRONIC FILING**

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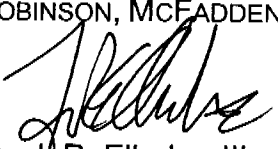
**Re: Application of Duke Energy Carolinas, LLC  
for approval of Energy Efficiency Plan  
Docket No. 2007-358-E**

Dear Mr. Terreni:

Enclosed for filing please find the Reply of Duke Energy Carolinas to the Response of the Environmental Intervenors to the Joint Motion for Approval of Partial Settlement Agreement. By copy of this letter we are serving copies of the same on all parties of record. If you have any questions, please have someone on your staff contact me.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

  
Frank R. Ellerbe, III

/bds  
Enclosure

c/enc: Catherine E. Heigel, Assistant General Counsel (via email and US Mail)  
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BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

Application of Duke Energy Carolinas, LLC  
for Approval of Energy Efficiency Plan Including an  
Energy Efficiency Rider and Portfolio of Energy  
Efficiency Programs

## COVER SHEET

DOCKET  
NUMBER: 2007-358-E

Submitted by: Frank R. Ellerbe, III

SC Bar Number: 1866

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

## DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition ☐ Request for item to be placed on Commission's Agenda expeditiously

☒ Other: Reply to Response of the Environmental Intervenors to the Joint Motion for Approval of Partial Settlement Agreement

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)			
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification	
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation	
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement	
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment	
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter	
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response	
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery	
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition	
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation	
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena	
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff	
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input checked="" type="checkbox"/> Other:	
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest		
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit		
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report		

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2007-358-E

In Re:	)	
	)	
Application of Duke Energy Carolinas,	)	<b>REPLY OF DUKE ENERGY</b>
LLC for Approval of Energy Efficiency	)	<b>CAROLINAS TO RESPONSE OF</b>
Plan Including an Energy Efficiency	)	<b>ENVIRONMENTAL INTERVENORS</b>
Rider and Portfolio of Energy Efficiency	)	<b>TO JOINT MOTION FOR</b>
Programs	)	<b>APPROVAL OF PARTIAL</b>
	)	<b>SETTLEMENT AGREEMENT</b>
	)	
	)	

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Pursuant to Rule 103-829 of this Commission's Rules of Practice and Procedure, Duke Energy Carolinas, LLC ("Duke Energy Carolinas" or the "Company") files this Reply to the Response of Environmental Intervenors to Joint Motion for Approval of Partial Settlement and Adoption of Settlement Agreement (the "Environmental Intervenors' Response") filed by the Southern Environmental Law Center, Southern Alliance for Clean Energy, Environmental Defense, and the Coastal Conservation League (collectively, the "Environmental Intervenors") on February 13, 2008. The Environmental Intervenors' Response opposes the partial settlement reached by Duke Energy Carolinas, the Office of Regulatory Staff, the South Carolina Energy Users Committee, and Wal-Mart Stores East, L.P. (collectively, the "Settling Parties").

The Environmental Intervenors have given no substantial reason for any further delay by this Commission of its consideration of the Application of Duke Energy Carolinas, LLC for Approval of Energy Efficiency Plan, Including an Energy Efficiency

Rider and Portfolio of Energy Efficiency Programs (the “Application”), as amended by the Partial Settlement. In reply to the Environmental Intervenors’ Response and in support of its recommendation that the Commission issue a directive closing the record and promptly scheduling the submission of proposed orders and/or briefs, Duke Energy Carolinas states the following:

## **I. BACKGROUND**

Duke Energy Carolinas filed its Application in this proceeding on September 28, 2007. After discovery and the filing of testimony, the Settling Parties reached a partial settlement agreement (the “Partial Settlement Agreement” or the “Partial Settlement”), which was filed with this Commission on January 29, 2008 as an exhibit to a joint motion seeking the approval of that settlement.<sup>1</sup> In addition to the Partial Settlement Agreement, the Company filed the supplemental testimony of Ellen T. Ruff and Steven M. Farmer in support of the settlement. At the evidentiary hearing in this matter, Ms. Ruff and Mr. Farmer, among others, testified at length about the Partial Settlement and answered questions about it. The Commission also permitted the Environmental Intervenors to present the testimony of James Atkins in response to the settlement. The Environmental Intervenors have now filed a response asking that the Partial Settlement be denied, or alternatively, that they be given more time to respond to the proposed settlement.

## **II. THE MOTION FOR APPROVAL OF THE SETTLEMENT WAS FILED FOLLOWING THIS COMMISSION’S SETTLEMENT POLICIES AND PROCEDURES**

This Commission has published on its website a set of guidelines establishing procedures that should be followed by parties presenting a settlement. The Partial

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<sup>1</sup> There was a second settlement agreement submitted by Duke Energy Carolinas, the ORS and Piedmont Natural Gas. The Environmental Intervenors have not objected to that settlement.

Settlement was filed in the manner prescribed by the Commission's guidelines. Specifically, the motion seeking approval of the settlement was filed seven days prior to the hearing as set forth in the guidelines. It was supported by an explanatory brief, as well as the pre-filed testimony of two Company witnesses. Further, these witnesses (and others) answered questions about the Partial Settlement Agreement during the hearing, which was held on February 5-6, 2008.

The Commission's guidelines state that "settlements [are] to be encouraged" and sets out procedures to be followed by parties seeking approvals of their settlements. In this case, the Settling Parties scrupulously followed these guidelines. Through the hearing process and its Response opposing the Partial Settlement, the Environmental Intervenors have been given a full opportunity to state the grounds for their opposition to the Partial Settlement. Although they have requested as alternative relief that they be given another opportunity to respond to the settlement, they have not given any explanation of what that response would include or why they need more time. The request for more time for "further development of an appropriate record" is inconsistent with the Commission's guidelines and is not supported by anything other than the desire of the Environmental Intervenors to delay consideration of the Company's Application.

**III. THE ENVIRONMENTAL INTERVENORS MISCHARACTERIZE THE EVIDENCE IN THE RECORD OR DRAW IMPROPER CONCLUSIONS AS IT RELATES TO THE OPT-OUT, THE COMPANY'S DEMAND SIDE MANAGEMENT DEFERRAL ACCOUNT BALANCE, THE USE OF AVOIDED COST, AND THE PUBLIC INTEREST**

A. Opt-Out for Large Customers. In paragraph 6 of their Response, the Environmental Intervenors acknowledge that they agree in principle that an opt-out provision for large customers may be appropriate. The concerns the Environmental

Intervenors have expressed with the opt-out provision in the Partial Settlement Agreement appear to relate to the customer self-certification. In particular, the Environmental Intervenors desire to know “the criteria Duke would employ in evaluating whether an otherwise eligible customer’s energy efficiency measure qualify it to opt out.” Environmental Intervenors’ Response, at 3, par. 5. Duke Energy Carolinas wishes to clarify that it will not be undertaking any independent analysis or audit of a large customer’s third party audit results or energy efficiency recommendations. The eligible customer will be providing the Company with a self-certification and the Company will be relying upon the truth and veracity of that certification. Because large customers stand to achieve significant energy efficiency gains under the energy efficiency programs proposed by the Company in its Application, there is very little incentive for a customer to intentionally commit fraud upon Duke Energy Carolinas in an effort to opt out.

The Company recognizes that there may be more than one way to accomplish an opt-out for large customers. However, Duke Energy Carolinas believes the self-certification process agreed to by the Settling Parties provides a fair and reasonable way to accommodate large customers that have taken steps to implement energy efficiency on their own without placing an undue burden on the Company to investigate the veracity of the customer’s certification. The fundamental advantage of the Company’s Energy Efficiency Plan is that it motivates both customers and the utility to achieve all cost-effective energy efficiency. The large customer opt-out provision agreed to by the Settling Parties was written with this understanding in mind.

B. Return of Demand Side Management Balance to Customers. In Paragraph 8 of the Environmental Intervenors’ Response, they state that the early return to

customers of the accumulated Demand Side Management deferral account balance (the “DSM Balance”) is being done to mitigate the impact of Rider EE (SC) to customers and that there is “[n]o testimony or other evidence . . . to show that it is in the public interest to tie the return of these *overcharges* to customers to approval of the pending save-a-watt Application.” [Emphasis added.] First, the Environmental Intervenors mischaracterize the DSM Balance as resulting from “overcharges” to customers. Duke Energy Carolinas has not overcharged any customer for DSM programs; rather, since 2002 the Company’s collections for DSM programs has simply exceeded its expenditures. In fact, the account was established pursuant to Commission direction to ensure that customers would not be overcharged or undercharged. Because any difference between revenues collected for DSM and costs incurred for DSM are reflected in the deferral account for future recovery or return to customers with interest (depending on whether there is a positive or negative balance at the time the account is settled), customers pay only for the exact amount of the costs eligible for deferral.

Second, as Company Witness Farmer testified at the hearing on February 6, 2008, the rate impact under Rider EE (SC) to a residential customer after the DSM Balance is fully returned is expected to be less than the cost of a gallon of milk each month. Duke Energy Carolinas believes this modest impact could hardly be characterized as “stinging,” especially in light of the fact that under the Company’s proposed Energy Efficiency Plan customers may actually see lower bills as a result of their participation in the Company’s energy efficiency programs, and the cost to customers is 15% less than the cost of comparable generation that would be needed to serve their demand.

Finally, Company Witness Ruff clearly stated in her Supplemental Testimony why it was appropriate to return the DSM Balance as part of this proceeding. On lines 9-12 of page 8 of her Supplemental Testimony, she testified that, "Because the Company's Application proposes to close existing DSM programs and remove the DSM factor from the Company's rates in order to implement a new Energy Efficiency Plan, [the Company] believe[s] it is appropriate to also address the DSM deferral account balance relating to these existing programs in this proceeding." The Company respectfully submits that the connection between the DSM Balance and the proposed Energy Efficiency Plan is clear and a return of the DSM Balance as part of this proceeding is not only appropriate, but desirable.

C. Agreement to Reduce Percentage of Avoided Cost by Five Percent. The Environmental Intervenors make the following statement in paragraph 10 of their Response: "Linking revenue to avoided costs is inherently unfair to customers because avoided costs are not a measure of value – they are a measure of supply price in a market where the end customers do not directly encounter that price." The Environmental Intervenors are simply wrong. Avoided costs are a direct measure of value to customers. In fact, the value to all customers, both participants and non-participants, from the Company's implementation of energy efficiency programs is the avoided cost of generation. Further, the Company's revenue is tied to the results it achieves. Thus, in order for the Company to receive any revenue, customers have by definition received value through the avoidance of additional generation and the amount that generation would have cost above the 85% of avoided cost revenue. Therefore, establishing a



regulatory recovery structure tied to avoided costs provides a better link between the value provided to customers and the Company's recovery mechanism.

D. The Public Interest. The Environmental Intervenors state in paragraph 12 of their Response that there is no substantial evidence in the record to support the conclusion that the "proposed settlement is in the public interest." Duke Energy Carolinas strongly disagrees with this assertion. There is substantial evidence in the record to support the Partial Settlement as being in the public interest. Company Witness Ruff through her pre-filed Supplemental Testimony and her testimony at the evidentiary hearing on February 5, 2008 provides specific support for all the key provisions of the Partial Settlement. She sets forth in very clear terms the benefits to customers from the compromises reached in the Partial Settlement. By way of illustration, the Company offers the following two statements from Ms. Ruff's Supplemental Testimony:

1. "With the reduction of its compensation to 85% of avoided generation costs as proposed in the Settlement Agreement, customers will realize even greater savings by paying 15% less than they would have been charged based on the incremental cost of avoided generation capacity and energy." Lines 5-8, p. 9.
2. "As a result, the Settling Parties agreed that a two year review by ORS would allow for a thorough evaluation of the Company's Energy Efficiency Plan that could result in recommendations for changes to the save-a-watt program. Duke Energy Carolinas believes that the experience ORS and the Company will have had with the Energy Efficiency Plan by that time will provide useful insight into ways in which it might be improved or simplified. The two year review provision will afford an opportunity to make necessary improvements early in the

implementation process. In short, the purpose of the review is to ensure that the application of Rider EE (SC) is just and reasonable and the annual rider review process provides sufficient transparency to the Company's customers." Line 20, p. 9 – line 6, p. 10.

**IV. THE SUBSTANTIVE ISSUES RAISED BY THE ENVIRONMENTAL INTERVENORS SHOULD BE ADDRESSED BY THE COMMISSION IN ITS ORDER RULING ON THE APPLICATION**

In their Response the Environmental Intervenors have stated several objections to specific provisions of the Partial Settlement Agreement. These issues cannot and should not be separated from the Commission's consideration of the Application as a whole. The intent and effect of the Partial Settlement Agreement was to revise and amend several aspects of the Energy Efficiency Plan outlined in the Application as originally filed by Duke Energy Carolinas. Although the Environmental Intervenors have the right to object to the Application and the Partial Settlement, those objections should be considered by the Commission along with all of the issues presented by the Application, as amended by the Partial Settlement Agreement. There is a sufficient record before the Commission to allow it to address all issues. What is needed now is direction from the Commission on the submission of proposed orders or briefs and any oral argument which the Commission determines is necessary.

**V. CONCLUSION**

The record in this proceeding is complete and contains substantial evidence to support the Partial Settlement as being (1) filed in accordance with the Commission's Settlement Policies and Procedures, and (2) just, reasonable and in the public interest.

WHEREFORE, Duke Energy Carolinas respectfully requests that the Commission close the record and issue a directive scheduling the submission of proposed orders and/or briefs. The Company believes the public interest is served by moving this matter forward to a final order ruling on all issues.

Respectfully submitted this 21<sup>st</sup> day of February, 2008.



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ATTORNEYS FOR DUKE ENERGY CAROLINAS, LLC

**BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA  
DOCKET NO. 2007-358-E**

In Re:

Application of Duke Energy )  
Carolinas, LLC for Approval of )  
Energy Efficiency Plan Including an )  
Energy Efficiency Rider and )  
Portfolio of Energy Efficiency )  
Programs )

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**CERTIFICATE OF SERVICE**

This is to certify that I, Leslie Allen, a legal assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **Reply of Duke Energy Carolinas To Response Of Environmental Intervenors To Joint Motion For Approval Of Partial Settlement Agreement** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

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Dated at Columbia, South Carolina this 21<sup>st</sup> day of February, 2008.

A handwritten signature in cursive script, reading "Leslie Allen", written in black ink.

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Leslie Allen